since January 1987 to the expiration of the term been continuously paying the same rental to the plaintiff in accordance with the terms and conditions under the said tenancy agreement. There is now produced and shown to me a copy of the debit note and a copy of the official receipt both from the plaintiff to the defendant collectively marked 'LLH-3'. The defendant is therefore estopped by attornment from disputing the plaintiff's title. The defendant had by her act put the plaintiff in place of the Textile Development Pte Ltd as her landlords on the terms and conditions contained in the said tenancy agreement. I found there was no substance in the first defence.

Second defence: In para 8 of the said affidavit she says:

> Under the said clause (meaning cl 6), the tenant must exercise this option in writing three months before the expiry of the initial period. By cl 7 of the agreement, the requisite notice shall be deemed sufficiently served if sent to the landlord by registered post.

The notice relied upon by the defendant is dated 4 April 1988 (encl 8 exh LLH-1) but the plaintiff says this notice was received by them only on 18 May 1988. They further say that the defendant, having postdated the notice to April 1988 so that she could be within the three-month period only posted the letter on or about 11 May 1988 (see affidavit of Syed Ali Bin Syed Mohamed, a postal clerk attached to the People's Park postal agency (encl 11)).

Under cl 7 of the agreement any notice to the landlords is to be sent by the tenant to them by registered post to the address of the landlords. It was for the defendant to prove her allegation that she had sent the notice exercising the option for a further one year on 4 April 1987 as claimed by her. In my view the defendant had not proved that she had sent the notice by registered post on 4 April as claimed by her. She did not produce in evidence the Post Office registration slip which could have evidenced that she had sent the notice on 4 April as claimed for her. Such failure to produce under the Evidence Act was against her. In addition the evidence of the said postal clerk went against her. I therefore set aside the decision of the deputy registrar and gave judgment for the plaintiff on their O 14 summons.

Appeal allowed.

Solicitors: *Shyam & Chew; SK Chua &Peter Low.*

Reported by *Terence Tan Bian Chye*

Tropicon Contractors Pte Ltd v Lojan Properties Pte Ltd

HIGH COURT (SINGAPORE) - SUIT NO 2423 OF 1987
THEAN J
18 MAY 1989

Contract - Building contract - Interim certificates - Whether revised certificates to replace original certificates valid - Delay certificate - Whether valid - Set-off against amounts owed under certificates - Liquidated damages for late completion - Payments to sub-contractors by developer after contractor's failure to do so - Costs of rectification - Loss of rental due to completion delay - Potential liability for further defects - Rules of Supreme Court 1970, O 14 - Arbitration Act (Cap 10, 1985 Ed), s 7 - Singapore Institute of Architects Standard Form cll 1(7), 22(1), 23(1), (2), (3), 24(1), (2), 29, 30(1), (2), 31(1), (2), (4) & (11)

Civil Procedure - Summary judgment - Payment under interim certificates to be enforceable by summary judgment - Whether set-off allowed against payment

The plaintiffs are building contractors and the defendants are building owners. They entered into a contract whereby the plaintiffs undertook the construction of a condominium development ('the project'). This contract ('the contract') which was in writing, adopted the standard form of the Singapore Institute of Architects. Under the contract, the date of completion was 14 May 1984. (All future references to clauses are to clauses in the contract). The contract was not completed by the completion date and the plaintiffs applied to the architects in charge of the project ('the architects') for an extension of time, but this request was rejected. During the whole period, the architects had issued interim certificates to certify the work done ('the certificates') which authorized the plaintiffs to be paid within 21 days of the receipt of the certificates by the defendants. Payment under 12 of the certificates had not been made. Following unsuccessful attempts to resolve the defendants' refusal to pay the certified payments, the plaintiffs instituted the present proceedings for the sum of $1,785,294.32 and interest thereon. After the writ had been served on the defendants, they took out an application for a stay of all further proceedings on the ground that the parties had agreed to refer the matter to arbitration. The plaintiffs had at the same time applied for summary judgment. These two applications were heard by a senior assistant registrar who dismissed the plaintiffs' application and allowed the defendants' application. This decision was appealed against. Before the senior assistant registrar had heard the applications, the architects had 'cancelled' the original interim certificates issued and purported to issue revised interim certificates which reduced the amounts payable to the plaintiffs by amounts equal to liquidated damages in respect of late completion of the contract by the plaintiffs. Also, a new interim certificate no 29 was issued. In addition, the architects issued certificates under cl 1(7) and under cl 30(2) stating that the defendants were entitled to deduct from the amounts owing to the plaintiffs moneys paid by the defendants for rectification work which the plaintiffs had failed to perform and moneys paid to nominated sub-contractors by the defendants which the plaintiffs had failed to pay. At the appeal, the defendants argued that the revised interim certificates were valid and that the defendants were entitled to the defences of set-off and counterclaim in respect of sums owed as liquidated damages for late completion, costs of rectification work, payments made to sub-contractors, loss of rental due to delay and poor workmanship and potential liability for further defects.

Held, allowing the appeal:

(1) Under cl 24(2), the defendants were only entitled to deduct liquidated damages for delay in completion only upon receipt of a delay certificate issued by the architects under cl 24(1).

(2) The original certificates were accepted by the parties and they negotiated a settlement on the basis of the amount due under these certificates. Most of the certificates had been issued more than two years before the issue of the revised certificates. The defendants had only challenged the original certificates at the commencement of the action.

(3) The interim certificate No 29 was not validly issued. It was issued long after the completion of works under the contract and it did not show any date at which valuation of the works carried out under the contract was made.

(4) Clause 31(11) of the contract, although drafted in a convoluted form, seem tolerably clear in stating that the contractor was to be paid amounts expressed to be payable in the interim certificates, and it was intended that if no payment was made, he would be able to obtain summary judgment in the absence of fraud, improper pressure or interference. The court therefore came to the conclusion that subject to any deduction or set-off as provided expressly in the contract, the amounts certified in the interim certificates are due and payable to the plaintiffs.

(5) The architects' argument that the previous extensions of time given to the plaintiffs were 'null and void' under cl 23(2) was utterly unsustainable. On a true construction of the contract, the architects are not obliged to grant the plaintiffs an extension of time until the plaintiffs have given the requisite notice. But once an extension had been given by the architects, it did not matter whether or not the requisite notice had been given by the plaintiffs. After a lapse of more than two and a half years, it was not open to the architects to declare the extension as void.

(6) Under cl 23(3), the architects were required to notify the plaintiffs of their decision as to the extension of the contract completion date 'as soon as any delaying factor' in respect of which an extension of time is permitted has ceased to operate. The purported extension of time by the architects was flawed as the delaying factor occurred more than three years before the purported extension of time.

(7) The delay certificate was founded on the extended contract completion date and since the latter was flawed the certificate was also flawed.

(8) The receipt of a valid delay certificate by the defendants (under cl 24(1)) was necessary for them to claim liquidated damages from the plaintiffs. Since the delay certificate issued by the architects was invalid, the claim by the defendants for liquidated damages for set-off must fail.

(9) The defendants' claim that they had incurred the costs of rectification of defective works which the plaintiffs had failed to rectify were supported by a certificate issued by the architects pursuant to cl 1(7). At this stage, it cannot be said if the certificate was invalid or whether the defendants were entitled to the amount. The defendants therefore had an arguable defence.

(10) The alleged loss of rentals consequent upon delay, incompletion and alleged poor workmanship and the defendants' potential liability for further defects are not deductible. The defendants are at liberty to claim for this amount in the arbitration.

(11) The appeal would be allowed and the judgment of the senior assistant registrar would be set aside. Judgment for the plaintiffs in the sum of $1,266,010.32 (representing the balance due under the 12 unpaid original interim certificates less the costs of rectification of defective works and the amount paid to nominated sub-contractors) with interest at 8% pa from the date of commencement of this action to the date of judgment was given. A stay of further proceedings in relation to the balance sum was also granted for the matter to be referred to arbitration. The plaintiffs were to have costs at the present level and below.

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No 55 of 1989.]

Legislation referred to

Arbitration Act (Cap 10, 1985 Ed) s 7
Rules of Supreme Court 1970 O 14

Warren Khoo and Susan Lim (Miss) for the plaintiffs.
Michael Rabindran Doraisamy for the defendants.

Cur Adv Vult

Thean J: The plaintiffs are building contractors and the defendants are building owners. On 2 March 1983, they entered into a contract whereby the plaintiffs undertook the construction and completion of a condominium development comprising town houses on lots 61-2 and 61-1 of town subdivision 28 situate at Gilstead Road, Singapore. Subsequently, the parties executed a formal agreement in writing dated 23 June 1983 ('the contract') which is in the standard form of the Singapore Institute of Architects. Forming part of and attached to the formal agreement are, inter alia, the conditions of contract ('conditions of contract').

Under the contract the date of completion of the development was 14 May 1984. As it often happens in the construction industry, the development was not completed within the time as agreed, and on 18 February 1985, the plaintiffs pursuant to cl 23(1) of the conditions of contract applied to the architects in charge of the development ('the architects') for an extension of time to 15 April 1985 for completing the then outstanding works. This was not acceded to and on 6 March 1985, the architects gave to the plaintiffs 'final extensions to the contract' as follows: (a) to 31 December 1984 for completing the main building works, and (b) to 18 February 1985 for completing the swimming pool and external works.

On 1 July 1985, the architects issued the certificate of practical completion stating that the works were, in their opinion, practically completed to their satisfaction in accordance with the conditions of contract on 1 July 1985 and possession was taken on 2 July 1985, and further that the defects liability period would end on 1 July 1986.

Under cl 31(1) of the conditions of contract read with the appendix thereto, the architects had to issue monthly interim certificates for payment to the plaintiffs, and the plaintiffs were entitled to be paid within a period of 21 days of the receipt thereof by the defendants. The architects had issued altogether 28 interim certificates,

serially numbered 1 to 28, since the commencement of the works up to January 1987, and the defendants had paid the first 16 interim certificates leaving the remaining 12 certificates, namely, nos 17 to 28, unpaid. Ten of these certificates, nos 17 to 26, were issued during the period between 19 September 1984 and 27 September 1985; certificate no 27 was issued on 15 December 1986 and certificate no 28, expressed as 'pre-final certificate', was issued on 16 January 1987. The total amount due under these 12 certificates was $1,931,294.32; but a sum of $146,000 was paid to account, leaving the balance of $1,785,294.32. Between June and July 1987 a series of meetings were held between the plaintiffs' and the defendants' representatives with a view to resolving the settlement of the outstanding sum owing by the defendants to the plaintiffs under the contract. Unfortunately, these were not successful, and no further payment was made. On 9 September 1987 the plaintiffs instituted these proceedings against the defendants claiming the sum of $1,785,294.32 and interest thereon.

After the writ had been served on the defendants, they took out an application for a stay of all further proceedings under s 7 of the Arbitration Act (Cap 10) on the ground that the plaintiffs and the defendants have, by cl 37(1) of the conditions of contract, agreed to refer to arbitration the matters in respect of which the action was commenced. At or about the same time, the plaintiffs took out an application under O 14 for summary judgment against the defendants for the amount claimed. While both applications were pending, the defendants on 24 November 1987 wrote to the architects expressing doubts as to whether the latter had taken the following matters into account in issuing their certificates, namely:

(a) as regards interim payment certificates the fact that not all work included in those certificates had been carried out (see cl 31(2)(a));
(b) as regards extension of time certificates whether the contractor has on every occasion complied with the condition precedent required in cl 23(2);

and suggested that if those matters had not been taken into account the architects should take action pursuant to cl 31(4) of the conditions of contract. Prompted, no doubt, by the defendants' letter, the architects did several things. First, they wrote to the plaintiffs a letter dated 2 December 1987 stating as follows:

> Pursuant to cl 23(3) of the conditions of contract, we hereby notify you that in respect of matters notified by you pursuant to your obligation under cl 23(2) we have decided that the contract completion date be extended by 17 days to 31 May 1984. This extension is for piling works which is the only matter in respect of which you have given a requisite notice pursuant to cl 23(2).
>
> The extensions of time granted by us earlier contained in our letters dated 21 September 1983, 27 October 1983, 16 May 1984 and 6 March 1985 were null and void in that you had not complied with the condition precedent set out in cl 23(2).

Contemporaneously with this letter, the architects pursuant to cl 24(1) of the conditions of contract issued to the plaintiffs a delay certificate certifying that as at 31 May 1984: (i) the 'contract completion date' was 14 May 1984, (ii) the total period of extension of time was 17 days, and (iii) the consequential 'extended contract completion date' was 31 May 1984, and certifying also that the plaintiffs were in default in not having completed the works by 31 May 1984. Secondly, the architects on 15 December 1987 issued 17 revised certificates, nos 12A to 28A, intending to replace the original interim certificates bearing corresponding numbers respectively, and one further interim certificate, no 29. Immediately following the issue of these certificates, the architects on 16 December 1987 issued: (i) a certificate pursuant to cl 1(7) of the conditions of contract certifying that the plaintiffs having failed to comply with the notices from the architects dated 24 July 1985 and 14 July 1986, the defendants as the employer had engaged others to carry out the work under the architects' supervision and that the defendants might deduct the extra costs of doing this work from any moneys otherwise due under the contract or recover the same from the plaintiffs, and (ii) a certificate pursuant to cl 30(2) of the conditions of contract certifying that the plaintiffs had failed to make payment as required by cl 30(1) of the sum of $137,493 due from them to sub-contractors and further certifying that by reason of such failure the defendants were entitled to pay the said sum to the sub-contractors and following such payment to deduct the sum from any sum certified by the architects to be due to the plaintiffs.

All these documents or certificates were produced and exhibited at the hearing before the senior assistant registrar, and were obviously relied upon by the defendants as raising a defence of set-off and counterclaim and showing that the claim of the plaintiffs is disputed which should therefore be referred to arbitration. At the conclusion of the hearing, the senior assistant registrar dismissed with costs the application by the plaintiffs for summary judgment, and allowed with costs the applications by the defendants for a stay of further proceedings in this action.

Against that decision, this appeal is now brought. The main issue before me is whether the amount of $1,785,294.32 or any part thereof is indisputably due to the plaintiffs. This issue turns on the following:

(i) the validity of the revised interim certificates and the new interim certificate no 29;
(ii) the true construction of cll 31(1) and 31(11) of the conditions of contract which were relied on by the plaintiffs, and
(iii) whether the defendants are entitled to set off against the sum due to the plaintiffs the various amounts claimed by the defendants.

The power of the architects to issue further interim certificates is expressly provided in cl 31(4) of the conditions of contract, which reads as follows:

> The architect shall have power to issue a further interim certificate at any time, whether before or after completion, correcting any error in an earlier interim certificate (but not any delay, termination of delay, further delay or any certificate other than an interim certificate) or dealing with any matter of which he was not aware, or which should have been dealt with, at the time of an earlier interim certificate, or revising any decision or opinion on which that certificate was based.

All the revised interim certificates were issued on 15 December 1987 and, as I have said, were obviously prompted by the letter of 24 November 1987 from the defendants. The basis for the revision or correction was not apparent on the face of these certificates, and it was given by the architects subsequently in their letter of 16 December 1987 written to the defendants (with a copy to the plaintiffs), in which the architects stated, amongst other things, the following:

> In the light of the advice given [by a firm of contract consultants], we have therefore decided to issue revised interim certificates which take account of the following:
>
> (1) The gross value of work properly done. We have made a fair allowance for any defective and incomplete work as required by cl 31(2)(g).
> (2) Variations have been valued without any adjustment being made to the prices for preliminary items in any of the certificates because of the contractors' failure to comply with cl 5.
> (3) We have recorded sums deducted by you for liquidated damages pursuant to cl 31(2)(h).
> (4) We have recorded sums paid direct by you to sub-contractors also pursuant to cl 31(2)(h).
>
> The revised interim certificates are included with this letter.
>
> We are also now in a position to issue a further interim certificate based upon the final account as prepared by WT Partnership and showing all the allowable sums that may be deducted in accordance with the contract. This certificate shows a balance due to you from the contractor.

However, in none of the revised interim certificates were the corrections or revisions expressed to reflect such basis as given in the architects' letter. Further, in none of them were the valuation dates given, ie the dates up to which the revaluations of all the works carried out under the contract were made; such dates are plainly required under cl 31(2). Starting from the revised interim certificates nos 14A to 28A, they each contained an amount of liquidated damages 'already deducted'. Though in each such revised interim certificate, the amount of liquidated damages was expressed to be 'recorded', it was in effect a deduction from the amount stated in the revised interim certificate and only the balance was certified as due. The use of words 'recorded herein' was, presumably, intended to comply with cl 31(2)(h) of the conditions of contract under which any sum deductible by the defendants for liquidated damages for delay is not to be deducted in the interim certificate. The manner in which the architects 'recorded' the liquidated damages as deducted by the defendants is somewhat extraordinary. What they did, in relation to each revised certificate, was to bring themselves back to the date of issue of the corresponding original interim certificate and then determined as of that date how much the delay was in the completion of the contract adopting 31 May 1984 as the extended date of completion of the works under the contract. They then took the number of days between that date and the date of the issue of the corresponding original interim certificate and multiplied that number by $2,000 and thus arrived at the figure of liquidated damages. In such an exercise, the architects regrettably erred. Under cl 24(2) of the conditions of contract the defendants are entitled to recover from the plaintiffs liquidated damages for delay in completing the works only upon receipt from the architects the delay certificate issued under cl 24(1) and may then deduct such liquidated damages from any moneys due under the contract to the plaintiffs; and the architects did not issue or purport to issue such a certificate until 2 December 1987. Hence, throughout the period in which the original interim certificates were issued, ie September 1984 to 16 January 1987, there was no question of any liquidated damages arising. In seeking to revise these interim certificates by 'recording', but in effect deducting, the amounts of liquidated damages the architects were wrong and did not revise them in accordance with cl 31(4) of the conditions of contract; so far as liquidated damages are concerned none were deductible and there was no error to be corrected; nor were they a matter of which the architects were not aware or which should be dealt with at the material times.

Most of the original interim certificates were issued more than two years ago prior to the issue of the revised interim certificates. As I have said, 10 out of the 12 interim certificates, namely, nos 17 to 26, were issued between 19 September 1984 and 27 September 1985, and certificate no 27 was issued on 15 December 1986, and certificate no 28 on 16 January 1987. These certificates were accepted by the plaintiffs and the defendants; they had a series of negotiations on the basis of the amount due under these certificates. Further, the earlier certificates nos 12 to 16, which the architects sought to revise were issued even earlier than September 1984 and were paid by the defendants. At no stage throughout the period of construction had the defendants complained or challenged in any way the original interim certificates issued by the architects. Only after the commencement of this action did they raise their doubts as to the correctness of the interim certificates.

I now come to the interim certificate no 29. That again was not issued in compliance with cll 31(1) and (2) of the conditions of contract. First, it was issued long after the completion of the works under the contract. Secondly,

it does not show any date at which the valuation of the works carried out under the contract was made. Thirdly, the deduction of $792,000 as liquidated damages was not maintainable for reasons which I shall give in a moment. Accordingly, all the revised interim certificates and the interim certificate no 29 were not issued in compliance with the conditions of contract. They are, in my judgment, invalid.

I now turn to the second question, namely, the entitlement of the plaintiffs to payment under the interim certificates under the conditions of contract. The plaintiffs rely on cll 31(1) and (11) of the conditions of contract, and say that under these provisions they are entitled to payment of the sums stated in the interim certificates and full effect must be given to them. These two clauses are as follows:

> 31(1) On the dates or at the stages for issuing interim certificates named in the appendix hereto the architect shall (subject to the provision of adequate vouchers and information by the contractor) issue interim certificates for payment to the contractor, who shall be entitled to payment of any sum stated therein as due to the contractor within the period for honouring certificates stated in the appendix, following receipt of the certificate or a copy of the certificate by the employer.
>
> 31(11) No certificate of the architect under this contract shall be final and binding in any dispute between the employer and the contractor, whether before an arbitrator or in the courts, save only that, in the absence of fraud or improper pressure or interference by either party, full effect by way of summary judgment or interim award or otherwise shall, in the absence of express provision, be given to all decisions and certificates of the architect (other than a cost of termination certificate or termination delay certificate under cl 32(8) of these conditions), whether for payment or otherwise, until final judgment or award, as the case may be, and until such final judgment or award such decision or certificates shall (save as aforesaid and subject to sub-cl (4) of this condition) be binding on the employer and the contractor in relation to any matter which, under the terms of the contract, the architect has as a fact taken into account or allowed or disallowed, or any disputed matter upon which under the terms of the contract he has as a fact ruled, in his certificates or otherwise. The architect shall in all matters certify strictly in accordance with the terms of the contract. In any case of doubt the architect shall, at the request of either party, state in writing within 28 days whether he has as a fact taken account of or allowed or disallowed or ruled upon any matter in his certificates, if so identifying any certificate and indicating the amount (if any) taken into account or allowed or disallowed, or the nature of any ruling made by him, as the case may be.

To my mind cl 31(1) is clear and explicit. It entitles the plaintiffs to payment of the sum stated in the interim certificate within the period set out in the appendix to the contract, namely, 21 days from the receipt of the certificate by the defendants. Clause 31(11) is rather lengthy and is drafted in a convoluted form. It starts off with a sweeping expression that no certificate of the architect is to be final and binding in any dispute between the employer and the contractor and is then followed by an exception to the effect that, in the absence of fraud or improper pressure or interference by either party or in the absence of express provision, full effect by way of summary judgment or interim award or otherwise is to be given to all decisions and certificates of the architect (other than certain certificates) whether for payment or otherwise until final judgment or award. In so far as interim certificates of payment are concerned, it seems to me that the intention of this clause is tolerably clear. It is intended that the contractor be paid the amounts expressed to be payable in the interim certificates, and if no payment is made by the employer it is intended to enable the contractor in the absence of fraud, improper pressure or interference or in the absence of express provisions, to obtain quick summary judgment for the amounts certified as due. In so far as any sum claimed by the employer is concerned, only the amounts expressly deductible under the contract may be set off against the amount due under the interim certificate. I therefore come to the conclusion that subject to any deduction or set-off as provided expressly in the contract, the amounts certified in the interim certificates are due and payable to the plaintiffs.

I now turn to the defences raised by the defendants. Firstly, they challenged the original interim certificates and contended that they were not validly issued in accordance with the conditions of contract and had been replaced by the revised interim certificates. For the reasons which I have given, the original certificates are, in my opinion, valid. This defence therefore has no merit. Secondly, the defendants raised the defence of set-off and counterclaim; they contended that the following amounts should be set off against any sum due to the plaintiffs under the contract: (a) the quantum of liquidated damages amounting to $792,000; (b) the costs of rectification works amounting to $347,000; (c) payments made by the defendants to nominated sub-contractors and suppliers in the sum of $137,493; (d) loss of rentals as a result of delay and poor workmanship amounting to $594,750, and (e) potential liability for further defects, all of which would exceed the plaintiffs' claim, and the claim of the plaintiffs is therefore disputed.

On the question of liquidated damages, the defendants originally in the affidavit of Cheong Min Tet, a director of the defendants, affirmed on 5 October 1987, claimed an amount of $362,000 as liquidated damages for delay on the part of the plaintiffs in completing the works under the contract. That apparently was based on the architects' letter dated 6 March 1985 in which they allowed an extension of time to 31 December 1984 for completing the main building works. Subsequently, by

their letter of 2 December 1987 the architects decided that the completion date be extended only by 17 days to 31 May 1984 and cancelled the earlier extensions of time holding that the earlier extensions were 'null and void', and they contemporaneously issued a delay certificate in which they certified, inter alia, that the 'extended contract completion date' was 31 May 1984. Accordingly, the amount of liquidated damages was recomputed and was increased to $792,000 which the defendants now claim.

Whether such a claim is maintainable depends on the conditions of contract, namely, cll 22, 23 and 24 thereof, to which I now turn. Under cl 22(1) the plaintiffs were obliged to complete the works on the date of completion as originally agreed or by such date as modified and recalculated pursuant to cl 10(1) (which has no relevance here) or by such date as extended pursuant to cl 23. Clause 23(1) provides that the date of completion may be extended and recalculated, subject to the plaintiffs' compliance with the requirements of cl 23(2), by such further period and until such further time as may reasonably reflect any delay in completion which has been caused by one or more of the factors specifically enumerated therein. Then comes the next provision, namely, cl 23(2) which is as follows:

> It shall be a condition precedent to an extension of time by the architect under any provision of this contract including the present clause *(unless the architect has already informed the contractor of his willingness to grant an extension of time)* that the contractor shall within 28 days notify the architect in writing of any event or direction or instruction which he considers entitles him to an extension of time together with a short statement of the reasons why delay to completion will result. Upon receipt of such notification the architect shall inform the contractor in writing within one month of its receipt whether or not he considers the event or instruction or direction in principle entitles the contractor to an extension of time. (Emphasis added).

It is true that this clause expressly spells out that the requisite notice from the plaintiffs together with a statement of the reasons is a condition precedent to the grant of an extension of time by the architects under the contract. But it also says, by necessary implications, that such requisite notice from the plaintiffs is not a condition precedent to the architects' grant of an extension of time, if the architects have already informed them of their willingness to grant the extension of time. The architects had by their letter of 6 March 1985 informed the plaintiffs that they allowed to the plaintiffs, inter alia, an extension of time to 31 December 1984 for completing the main building works. Clearly, that letter falls within the words [in italics] in that clause which I have underscored. Accordingly, in my judgment, the architects' decision that the previous extensions of time (including the extension to 31 December 1984 for completing the main building works) were 'null and void' on the ground that the plaintiffs had not given the requisite notice in compliance with cl 23(2) is utterly unsustainable. Plainly on the true construction of that clause the architects are not obliged to give any extension of time until the plaintiffs have given the requisite notice thereunder. But once an extension of time is given by the architects it matters not whether such requisite notice has been given by the plaintiffs. In this particular case, the extension of time to 31 December 1984 was given by the architects after they had reviewed their instructions given to the plaintiffs and ascertained 'the legitimate and appropriate extension of time under the [contract]': see their letter of 4 March 1985 to the plaintiffs. Surely in such circumstances, after a lapse of more than two and a half years, it is not open to them to declare such an extension as 'null and void' on the ground of absence of the requisite notice.

I now turn to cl 23(3) which also bears on the question of extension of time, and that clause provides:

> *As soon as any delaying factor* in respect of which an extension of time is permitted by the contract *has ceased to operate* and it is possible to decide the length of the period of extension beyond the contract completion date (or any previous extension thereof) in respect of such matter, the architect shall notify the contractor of his decision and estimate of the same, provided that where two or more such factors are operating concurrently the architect need not so notify the contractor until the last of such matters has ceased to operate. (Emphasis added).

Now, the extension of the 'contract completion date' to 31 May 1984 was given purportedly pursuant to cl 23(3) on 2 December 1987. This provision requires the architects to notify the plaintiffs of their decision 'as soon as any delaying factor' in respect of which an extension of time is permitted by the contract has ceased to operate. The 'delaying factor' in the extension of time appeared to have occurred more than three years ago. That extension of time was manifestly not in compliance with the clear provisions of that clause. It is also significant that as of that date, ie 2 December 1987, the certificate of practical completion had already been issued. Accordingly, the purported extension of time to 31 May 1984 given by the architects on 2 December 1987 was flawed. It is, in my judgment, invalid.

I now come to the delay certificate ('delay certificate') which was issued also on 2 December 1987 and was founded on the 'extended contract completion date' being 31 May 1984. As the extension of the contract completion date to 31 May 1984 was flawed, it follows that the delay certificate on that basis was also flawed. There is yet another fatal defect in the delay certificate. It was issued purportedly in pursuance of cl 24(1) of the conditions of contract, and that clause is as follows:

> *As soon as the latest date for completion of the works pursuant to cl 22 of the conditions has passed,* then if at the said date there are no other matters entitling the contractor to an extension of time and the works nevertheless remain incomplete, the architect shall issue a certificate setting out the contract

completion date (if necessary modified or recalculated under cl 10(1) of these conditions); the total period of extension of time (if any), the consequential extended contract completion date (if any); and certifying that the contractor is in default in not having completed the works by the stated completion date or extended completion date (as the case may be). Such certificate shall be issued to the employer with a copy to the contractor, as is hereinafter called a 'delay certificate'. (Emphasis added).

The delay certificate was issued by the architects on 2 December 1987; it was not issued as soon as the latest date for completion of the works pursuant to cl 22 of the conditions of contract had passed. It was issued more than two and a half years after date of completion had elapsed. The delay certificate was therefore not issued in compliance with cl 24(1) and it is, in my view, invalid. As regards the extension of the completion to 31 December 1984 given by the architects on 6 March 1985, no delay certificate was ever issued by the architects on the basis that the extended contract completion date was 31 December 1984.

The issue of a valid delay certificate is by reason of cl 24(2) of the conditions of contract necessary to found a claim for liquidated damages. That clause provides as follows:

Upon receipt of a delay certificate the employer shall be entitled to recover from the contractor liquidated damages calculated at the rate stated in the appendix to the conditions from the date of default certified by the architect for the period during which the works shall remain incomplete, and may but shall not be bound to deduct such liquidated damages, whether in whole or in part, from any moneys due under the contract at any time up to and including the final certificate. (Emphasis added).

It is clear that only upon receipt of a delay certificate under cl 24(1) that the defendants are entitled to liquidated damages, and as the delay certificate issued by the architects is invalid, the claim by the defendants for liquidated damages must fail. Accordingly, neither the amount of $362,000 nor the amount of $792,000 can be maintained as liquidated damages and be set off against the amount due to the plaintiffs.

The defendants also claim that they had incurred the costs of rectification of defective works which the plaintiffs failed to rectify under the terms of the contract and the total amount incurred was $381,791. In support of this claim, the defendants rely on the certificate issued on 16 December 1987 by the architects pursuant to cl 1(7) of the conditions of contract, to which I have adverted. At this stage it cannot be said that this certificate is invalid; nor am I in a position to say whether or not the defendants are entitled to this amount. All that can be said, and that I need to say, is that the defendants have certainly raised an arguable claim for this amount, and under cl 1(7) this amount, if established, is deductible from the amount due to the plaintiffs.

As for the amount paid to the nominated sub-contractors, namely, a sum of $137,493, the plaintiffs are not disputing this amount, and under cl 30(4) of the conditions of contract this amount is also deductible from the amount due to the plaintiffs. The alleged loss of rentals consequent upon the delay and alleged poor workmanship and the potential liability for further defects are not deductible; the defendants are at liberty to claim for this amount in the arbitration. Whether they succeed in such claim or not is a different matter.

In the result, in my judgment, the amount indisputably due to the plaintiffs is $1,266,010.32 which is arrived as follows:

Balance of the total amount due under the 12 interim certificates, nos 17 to 28			$ 1,785,294.32
Less			
(i)	Costs of rectification of defective works claimed by the defendants	$381,791	
(ii)	Amount paid to nominated sub-contractors	$137,493	
		Balance	$ 1,266,010.32

Accordingly, I allow the appeal and set aside the judgment of the senior assistant registrar. I give judgment to the plaintiffs in the sum of $1,266,010.32 with interest at 8% pa from the date of commencement of this action to the date hereof, and order a stay of further proceedings in relation to the claim for the balance sum of $519,284 which the parties may refer to arbitration. The plaintiffs shall have the costs here and below.

Appeal allowed.

Solicitors: *Warren Khoo & Co; Ramdas & Wong.*

Reported by *Terence Tan Bian Chye*